wage deductions, most cases support the result reached in the principal case, though not all are consistent as to the underlying theory. Whether the employer contributes all, part, or nothing to the support of the physician, the result is the same, providing he receives no profit from the arrangement, and he is liable only for failure to use reasonable care in employing a competent physician or for the retention of one known to be incompetent. *Pittsburg, etc., R. Co.* v. *Sullivan,* 141 Ind. 83; *Quinn* v. *Railroad Co.,* 94 Tenn. 713; *Railroad Co.* v. *Artist,* 60 Fed. 365; *Eighmy* v. *U. P. R. Co.,* 93 Ia. 538; *Haggerty* v. *St. Louis R. Co.,* 100 Mo. App. 424; *Guy* v. *Lanark Fuel Co.,* 72 W. Va. 728; *Richardson* v. *Carbon Hill Coal Co.,* 10 Wash. 648; *Wells* v. *Ferry-Baker Co.,* 57 Wash. 658; *Ark., etc., R. Co.* v. *Pearson,* 98 Ark. 399; *Big Stone Gap Co.* v. *Ketron,* 102 Va. 23; *Poling* v. *San Antonio R. Co.,* 32 Tex. Civ. App. 487; *Nicholson* v. *Atchison, etc., Hospital Ass'n,* 97 Kan. 480; *Nations* v. *Luddington, etc., R. Co.,* 133 La. 657. Contra, *Phillips* v. *St. Louis R. Co.,* 211 Mo. 419. One line of cases cited takes the ground that where no profit is received the principle exempting charitable hospitals from liability for negligence of physicians applies. *Railroad Co.* v. *Artist, supra; Wells* v. *Ferry-Baker Co., supra.* See 18 MICH. L. REV. 539, as to liability of charitable hospitals, and 4 L. R. A. (N. S.) 66, as to relation of that to the present problem. The analogy to charitable hospitals is disapproved in *Haggerty* v. *St. Louis R. Co., supra,* and *Ark., etc., R. Co.* v. *Pearson, supra,* inasmuch as the purpose of the employer cannot be said to be purely philanthropical. The better ground seems to be that of the principal case, which holds the physician to be neither a servant nor an agent but an independent contractor. On that theory the employer is liable only when there is a contractual relation between the employer and employee, making it the duty of the former to furnish skilled medical treatment, which cannot be evaded through the interposition of an independent contractor. An express contract to this effect is obviously sufficient. *Wells* v. *Ferry-Baker Co., supra; Sawdey* v. *Spokane, etc., R. Co.,* 30 Wash. 349. Such a contract will be implied where the employer derives an actual profit from the wage deduction. *Texas Coal Co.* v. *Connaughton,* 20 Tex. Civ. App. 642; *Sawdey* v. *Spokane, etc., R. Co., supra.* As the test by which the status of a hospital as charitable or otherwise is ascertained is whether or not a profit is received, and since a non-charitable hospital is liable for the negligence of its physicians, it is clear that the same result is obtained whether or not the analogy of the charitable hospital is applied in cases of the present type.

MUNICIPAL CORPORATIONS—CITY OWED NO DUTY OF ACTIVE INSPECTION OF AUTOMOBILE IN FAVOR OF ASSESSOR SOLICITING RIDE.—The city of Yonkers placed one of its automobiles in the charge and control of the city engineer. The city assessor, wishing to go to a distant part of the city for the purpose of transacting certain business in the line of his official duties, asked the engineer to take him there. Due to a defect in its steering apparatus, the car was overturned and the assessor was killed. His administratrix brought this action for damages on the theory that the city should have inspected the

car. *Held,* that the assessor was a mere licensee and the city owed him no duty, and that even if the relationship had been such as ordinarily to establish such a duty the city would not be liable here because it was acting in a governmental capacity. *Carroll* v. *City of Yonkers* (N. Y., 1920), 184 N. Y. S., 847.

The general proposition that a municipal corporation is not liable for torts committed while it is acting in a governmental capacity, and that it is liable for those committed while it is acting in its private or corporate capacity, is so well settled that no citation of authority is necessary. For an interesting discussion of this general subject, see 10 MICH. L. REV. 306. In the instant case it was clear from the evidence that the deceased was a mere licensee. It further appeared that the engineer was not acting within the scope of his authority. Consequently, the city could not be held liable in any case on those facts. *Massell* v. *Boston Elevated Railway,* 191 Mass. 491; *Thayer* v. *City of Boston,* 19 Pick. 516. Nevertheless, the court discussed the above proposition, and indicated that the proper way to ascertain in any case into which class of powers a certain act should be placed was to determine whether the city at the time of the casualty was carrying on a public function or whether it was acting for its own private advancement and emolument. The conflict in the authorities is due to the uncertainty of the proper test to be applied rather than to the uncertainty of the law itself. Several rules have been advanced by the courts. Some have applied the test of whether the municipality derives revenue from the service or not. Others say that whether the work is of a commercial or of a public character should determine. *Bailey* v. *The Mayor,* 3 Hill 531. Still others draw a different distinction. See *Rochester White Lead Co.* v. *Rochester,* 3 N. Y. 463. In *Lloyd* v. *Mayor, etc., of N. Y.,* 5 N. Y. 369, the court declined to assume the responsibility of establishing any criterion, saying it would determine as each case arose into which class it should fall. In *Hodgins* v. *Bay City,* 156 Mich. 687, and in *Jones* v. *Sioux City,* 185 Iowa 1178, the courts recognized the general rule, but immediately set out to avoid its effects. It is often difficult to tell where one class of powers leaves off and the other begins. An examination of the cases reveals the fact that the courts are disinclined to draw too strict a line so as to exempt municipal corporation from liability to the detriment of private rights. As yet no definite test has been formulated which has been generally adopted.

MUNICIPAL CORPORATIONS—LETTING CONTRACTS TO LOWEST BIDDER.—Where the charter of a city required that improvement contracts should be let to the lowest bidder, and the city invited bids requiring each bidder to furnish his own specifications for any hard surface pavement, *held,* that the proceeding was void, as there was no direct competition on the basis of fixed specifications as contemplated by law. *Montague-O'Reilly Co.* v. *Milwaukee* (Ore., 1920), 193 Pac. 824.

The object and purpose of a statutory provision requiring work to be let to the lowest responsible bidder is to insure competition in the letting of